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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,758	04/21/2004	Thomas Edward Kreitler	65961-0136	5331

28886 7590 02/23/2006

CLARK HILL, P.C.  
500 WOODWARD AVENUE, SUITE 3500  
DETROIT, MI 48226

EXAMINER

EDELL, JOSEPH F

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 02/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/828,758

Applicant(s)

KREITLER, THOMAS EDWARD

Examiner

Joseph F. Edell

Art Unit

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 December 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 12 and 13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 12 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12 December 2005 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,671,573 to Nemoto et al. in view of U.S. Patent No. 5,110,195 to Schmutz et al.

Nemoto et al. disclose a seat assembly that is basically the same as that recited in claims 1 and 12 except that the head restraint lacks a biasing device, as recited in the claims. See Figures 1-5E of Nemoto et al. for the teaching that the seat assembly has a seat cushion 1 (see Fig. 2), a seat back 2 with top and bottom portions, a seat frame 7

(see Fig. 3), a head restraint 3 mounted on the seat frame by posts 5a,5b and movable between deployed and retracted positions, a plurality of notches 8 (see Fig. 1) on the posts, and a control mechanism 10 within the head restraint that includes a housing 6, a spring shaft 12 pivotally mounted on the housing wherein the shaft is positioned to engage the notches of each of the posts preventing movement of the head restraint and becoming spaced from the post upon rotation thereof to disengage the notches enabling movement of the head restraint. The spring shaft 12 has two pivot axes at the edges of the spring receiver 19 wherein the spring shaft rotates away from the posts as the spring shaft slides along the inclined section 15a of the guide member 6 and the spring shaft being biased to engage the posts.

Schmutz et al. show a seat assembly similar to that of Nemoto et al. wherein the seat assembly has a head restraint 2 (Fig. 1) with each pipe housing 7 (see Fig. 3) including a biasing device 31 between the post 6 and the pipe housing. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seat assembly of Nemoto et al. such that the posts and the housing has a biasing device disposed therebetween, such as the seat assembly disclosed in Schmutz et al. One would have been motivated to make such a modification in view of the suggestion in Schmutz et al. that the biasing device provides an energy storage device to aid in biasing the head restraint toward the deployed position.

***Allowable Subject Matter***

4. Claims 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

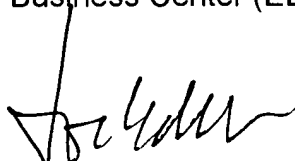
### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1, 12, and 13 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joe Edell  
February 17, 2006